

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NORINE F. GARZA,)	
)	No. CV-05-5094-CI
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION TO DISMISS WITH
)	PREJUDICE
JO ANNE B. BARNHART,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	

BEFORE THE COURT is Defendant's Motion to Dismiss, filed November 10, 2005, served electronically on counsel for Plaintiff, but not noted for hearing. (Ct. Rec. 8.) Attorney Jeffrey Schwab represents Plaintiff; Special Assistant United States Attorney Jeffrey H. Baird represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 6.)

On December 5, 2005, the court directed Plaintiff to show cause why the captioned matter should not be dismissed; a response was due by December 12, 2005. No response has been received.

Defendant moves to dismiss the captioned matter, noting the court has no jurisdiction, pursuant to 42 U.S.C. § 405(g), to consider the matter because a "final decision" "after a hearing" was not obtained. Plaintiff filed for supplemental security income (SSI) benefits; her application was denied initially and on reconsideration. Plaintiff requested an administrative hearing but

1 failed to appear. She was served with a Notice to Show Cause for
2 Failure to Appear. (Tr. at 42-43.) Plaintiff responded by letter
3 dated March 23, 2005, explaining she had misplaced the Notice of
4 Hearing because she was "overwhelmed and disorganized." (Tr. at 44.)
5 On March 25, 2005, the ALJ determined Plaintiff's reasons for
6 failing to appear did not constitute good cause and issued an order
7 dismissing her claim. (Tr. at 14.) Thus, the final decision on
8 Plaintiff's application for benefits was the State Agency decision
9 of August 7, 2003. 20 C.F.R. § 416.1457(b)(2). Plaintiff requested
10 review before the Appeals Council, but review was denied. (Tr. at
11 4-5.) This appeal followed.

12 A claimant's failure to exhaust the procedures set forth in the
13 Social Security Act, 42 U.S.C. § 405(g), deprives the district court
14 of jurisdiction. *Heckler v. Ringer*, 466 U.S. 602, 617 (1984); *Ensey*
15 *v. Richardson*, 469 F.2d 664, 666 (9th Cir. 1972). Section 405(g)
16 provides a civil action may be brought only after (1) the claimant
17 has been party to a hearing held by the Commissioner, and (2) the
18 Commissioner has made a final decision on the claim. To obtain a
19 hearing, the claimant must (1) present a claim to the Commissioner
20 and obtain an initial determination (20 C.F.R. § 404.900(a)(1)); (2)
21 seek reconsideration (20 C.F.R. §§ 404.900(a)(2), 404.909, 404.920);
22 and (3) after reconsideration, request a hearing before an
23 administrative law judge (20 C.F.R. §§ 404.900(a)(3), 404.933). The
24 decision made following the hearing does not become the final
25 decision of the Commissioner until the claimant requests review by
26 the Appeals Council, and the Appeals Council either grants or denies
27 review. 20 C.F.R. §§ 404.900(a)(5), 404.955, 404.981. Absent a final
28 decision from the ALJ following an administrative hearing, judicial

1 review is not available. *Califano v. Sanders*, 430 U.S. 99, 108
2 (1977). A dismissal for failure to appear at an administrative
3 hearing is not a final decision. Thus,

4 **IT IS ORDERED:**

5 1. Defendant's Motion to Dismiss (Ct. Rec. 8) is **GRANTED;**
6 Plaintiff's Complaint and claims are **DISMISSED WITH PREJUDICE.**

7 2. The District Court Executive is directed to file this
8 Order and provide a copy to counsel for Plaintiff and Defendant.

9 DATED January 3, 2006.

10
11 S/ CYNTHIA IMBROGNO
12 UNITED STATES MAGISTRATE JUDGE
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